

CITY OF CHICAGO POLICE DEPARTMENT –
POLICEMEN’S BENEVOLENT & PROTECTIVE
ASSOCIATION OF ILLINOIS - UNIT 156 - LIEUTENANTS
SECTION 9.3A SUMMARY OPINION PROCEDURE

*In the Matter of the
Arbitration Between:*

CITY OF CHICAGO POLICE
DEPARTMENT

Lt. John D. Dowd
Gr. No. [REDACTED]

-and-

POLICEMEN’S BENEVOLENT &
PROTECTIVE ASSOCIATION OF
ILLINOIS, UNIT 156 - LIEUTENANTS

ARBITRATOR’S SUMMARY OPINION AND BINDING AWARD

Background

1. **Introduction**

On 18 October 2011, a complaint came into the Bureau of Internal Affairs Headquarters Office alleging that a Chicago Police Officer, Gerald M. O’Malley, Star 17187, and an Officer allegedly by the name of Klein “were engaged in a practice of double dipping” while being employed at the [REDACTED] facility, [REDACTED]. The Bureau commenced surveillance of the [REDACTED] facility and learned that [REDACTED] had a contract with [REDACTED] to furnish security services at the facility.

Aces Security is operated by Chicago Police Officer James Calace, Star 12608. Officer Calace was approached by the investigators and freely gave copies of [REDACTED] time sheets to Officer Joseph Webb, Star 17697, who had been assigned to investigate along with Supervisor Sergeant Muscolino. Together, they reviewed the time sheets of [REDACTED] to verify which

employees were Department members and to cross check the members' scheduled hours, days off for furloughs, against the times that the Officers worked at the [REDACTED] facility. In doing so, Officer Webb believed that Detective James Halper, Star 21345, "was working for [REDACTED] simultaneously while being employed and on the assignment and attendance records with the Chicago Police Department". The concept of double dipping meant that Officers were working secondary employment at the same time the Officers were expected to be working for the Department. This discovery caused Officer Webb to pursue an investigation of Detective Halper's work activities at the [REDACTED] facility.

2. Detective James J. Halper

It is necessary for this Arbitrator to review the activities of Detective James Halper for the Department's sustained allegations as to Detective Halper are the basis for the sustained allegations against Lieutenant Dowd which this Arbitrator has been asked to review along with the subsequent recommended suspension of Lieutenant Dowd. The conclusions that this Arbitrator may make as to Detective Halper are restricted to the purpose just enumerated, namely, to determine the propriety of the Department's actions against Lieutenant Dowd, and are not intended to bind Detective Halper in any venue that he may pursue in regard to the actions of the Department has taken against him.

During the time periods involved, Detective Halper was assigned to Area Central, Property Crimes on the third watch.

In a question and answer statement conducted by Officer Webb on 21 March 2013, Detective Halper in his own words explained his employment in security at UPS when he stated:

WEBB: Have you ever, or do you presently work for [REDACTED]
[REDACTED] at the [REDACTED]
[REDACTED] facility located at [REDACTED]

Chicago Illinois?

HALPER: Yes.

WEBB: Do you recall when you were hired by [REDACTED]
[REDACTED]?

HALPER: Approximately sometime in 2006 I'm unsure of the month.

WEBB: Who hired you for employment [REDACTED]
[REDACTED]

HALPER: Jim CALACE.

WEBB: What were your scheduled hours of employment for [REDACTED] at the [REDACTED] Facility at [REDACTED] from 04 January 2011 to 23 January 2012?

HALPER: When I first started there were no set hours. You came in whenever you wanted to come at some point the hours became more structured. And then the hours became 2300 to 0400 hours.

WEBB: What days of the week did you work for [REDACTED] y [REDACTED] at the [REDACTED] Facility at [REDACTED] from 04 January 2011 to 23 January 2012?

HALPER: Usually Mondays and Wednesdays.

In his question and answer statement, Detective Halper also answered:

WEBB: Who was your immediate supervisor on 04 January 2011 ?

HALPER: According to the sheets John DOWD

WEBB: What time did your tour of duty start and end on 04 January 2011?

HALPER: As I sit here today with out the ability to review all of the evidence in this case I not recall the specific events on the day in question. However I know that I was authorized to change my hours on days that I worked for [REDACTED] which were mostly Mondays and Wednesdays to a start time of 1330 hours. Sergeant DOWD specifically

granted this request. On each of these dates I informed my supervisor and/or the desk officer of the fact that I started at 1330 hours on each date in question. At no time did I receive pay for hours I did not work for the City of Chicago.

WEBB: Did you submit a Compensatory Time Report (CPD-116.08) for time to be used on 04 January 2011?

HALPER: Not that I recall.

WEBB: Did you request and receive permission to leave early on 04 January 2011, and if so from whom?

HALPER: I don't recall.

WEBB: Did you check off with a supervisor prior to the conclusion of your tour of duty on 04 January 2011, and if so, whom?

HALPER: I don't recall.

In his question and answer statement, Lieutenant Dowd answered:

DOWD: I believe HALPERS duty hours were 1700 to 0200. Halper came to me and requested a 1500 hour start I told him that I could not make that decision unilaterally. I told him there were people with more seniority who wanted the 1500 start. He told Halper told me he had a side job that started at 1:00am, that's why Halper needed the 1500 start. I told Halper that we needed to check with Sgt. Collis TATE as well. At some point Halper gave us a schedule of two days a week where he needed the 1500 hour start. We did grant his request for the 1500 hour start. Starting at 1500 would allow Halper to go to his secondary employment without interfering with his hours with the Chicago Police Department. I was not aware that the side job was at [REDACTED]

ANDERSON: Were you aware or did you know of Detective HALPERS work hours at the [REDACTED] on [REDACTED]?

DOWD: I believe the starting time was 1:00am, that's what Halper told me.

ANDERSON: Were you aware, or did you have knowledge that Det.

HALPER was working at the [REDACTED]
[REDACTED] while simultaneously working for the Chicago
Police Department?

DOWD: No.

ANDERSON: What were Det. HALPERS duty hours with the
Department while he was assigned to (Area One) or
Central Area in 2011 and into 2012?

DOWD: Some days were 1700 to 0200. 2 days were 1500 to
0001 hours.

ANDERSON: What were your assigned 3rd Watch duty hours at (Area
One) or Central Area in 2011 and into 2012?

DOWD: Generally they were 1500 to 0001. Often we would
change our hours for investigative needs.

According to Lieutenant Dowd, Detective Halper's hours were 1700 to 0200 and on two days
were 1500 to 0001 hours; that he [Lieutenant Dowd] and Sergeant Collis Tate did approve a
starting time at 1500 for two days a week. This approval dovetails with Detective Halper's own
statement that he worked at [REDACTED] two days a week on Mondays and Wednesdays.

There were numerous [REDACTED] weekly time sheets produced establishing that
Detective Halper was reporting to work at [REDACTED] at 2300 such as, for example, 21 November
2011, 6 July 2011, 11 July 2011 and 22 August 2011, among others. There is the question and
answer statement of Officer James Cascone who testified that he, too, worked secondary
employment at [REDACTED] and usually began at 11:30 p.m. Officer Cascone testified that when he
arrived for work at [REDACTED] at 11:30 p.m. Detective Halper was already at [REDACTED] working. There was
also surveillance reports revealing that Detective Halper was reporting to Area Central at 1700
and sometimes at 1500.

It was this type of evidence that caused Officer Webb to make the following observation
in his summary report at page 81:

HALPER was asked a series of questions relating to the following dates where he was simultaneously on the Attendance and Assignment sheets for the Department and on the sign in Sheet for [REDACTED]. The dates are as follows; 04 January 2011, 05 January 2011, 17 January 2011, 27 January 2011, 08 February 2011, 10 February 2011, 14 February 2011, 05 April 2011, 11 April 2011, 27 April 2011, 02 May 2011, 04 May 2011, 09 May 2011, 11 May 2011, 23 May 2011, 01 June 2011, 08 June 2011, 13 June 2011, 15 June 2011, 20 June 2011, 22 June 2011, 27 June 2011, 04 July 2011, 06 July 2011, 13 July 2011, 20 July 2011, 25 July 2011, 27 July 2011, 01 August 2011, 03 August 2011, 15 August 2011, 24 August 2011, 31 August 2011, 05 September 2011, 07 September 2011, 12 September 2011, 14 September 2011, 19 September 2011, 26 September 2011, 05 October 2011, 12 October 2011, 31 October 2011, 07 November 2011, 28 November 2011, 30 November 2011, 05 December 2011, 07 December 2011, 12 December 2011, 19 December 2011, 28 December 2011, 09 January 2012, 11 January 2012, 16 January 2012, 18 January 2012, 23 January 2012.

HALPER was asked, "What were your duty hours (date specific)?"

HALPER replied, "According to the A& A sheet it stated 1700 to 0200, or According to the A& A sheet it stated 1500 to 0001.

HALPER was asked, "Were you present for duty on (date specific)?"

HALPER replied, "Yes."

As a result, Officer Webb sustained an overall allegation which was listed as Allegation 1 and read:

SUSTAINED- Violation of Rule 02

Any action or conduct which impeded the departments effort to achieve its policy and goals or brings discredit upon the department in that between the dates of 04 January 2011 thru 23 January 2012 at the location of [REDACTED] Accused James HALPER #21345 worked secondary employment and received compensation while on duty and working for the Chicago Police Department. The following allegations outline specific dates, times, and locations where the infractions took place.

In addition, Officer Webb sustained 112 additional allegations against Detective Halper. Typical of the wording of the subsequent allegations was Allegation 2, which read:

SUSTAINED- Violation of Rule 02

Any action or conduct which impeded the departments effort to achieve its policy and goals or brings discredit upon the department in that on 28 December 11 at 2357 hours at the location of [REDACTED] Accused James HALPER #21345 worked secondary employment and received compensation while on duty and working for the Chicago Police Department.

SUSTAINED- Violation of Rule 27

Failure to report promptly any anticipated absence from duty in that on 28 December 2011 at 2357 hours at the location of [REDACTED] Accused James HALPER #21345 worked secondary employment and received compensation while on duty and working for the Chicago Police Department without making notification to any supervisory department member of his absence.

SUSTAINED- Violation of Rule 28

Being absent from duty without proper authorization in that on 28 December 2011 2357 hours at the location of [REDACTED] Accused Detective James HALPER #21345 worked secondary employment and received compensation while on duty and working for the Chicago Police Department without receiving proper approval or authorization from any supervisory department member.

SUSTAINED- Violation of Rule 30

Leaving duty assignment without being properly relieved or without authorization in that on 28 December 2011 at 2357 hours at the location of [REDACTED] Accused Detective James HALPER #21345 worked secondary employment and received compensation while on duty and working for the Chicago Police Department without making notification to any supervisory department member that he was "leaving his duty assignment early.

This Arbitrator notes that the apparent basis for the findings was the fact that Detective Halper was reporting to work at UPS at 2300 or 11 p.m., whereas according to Lieutenant Dowd Detective Halper on certain days was permitted to vary his usual assignment 1700 to 0200 to 1500 to 0001, namely, midnight, which would mean in any event Detective Halper was leaving his duty post at the Chicago Police Department prior to the end of his tour while the A/A sheets

indicate he was working in order to report at the very same time he was supposedly on duty at the Chicago Police Department, namely, at 11 p.m. The record reveals that Detective Halper did not submit compensatory time slips for the time he took in order to leave early. Interestingly enough, as noted, on overtime requests for court duty Detective Halper indicated that his duty hours were 1500 to 0001, inconsistent with the claim that he had made that he had permission to begin at 1330 which would mean that Detective Halper would have an end tour before 11 p.m.

Investigator Webb recommended that Detective Halper be separated from the Department, which recommendation was approved by the Commander of the Bureau of Internal Affairs.

Again, this Arbitrator does not intend by his findings to impinge on any efforts that Detective Halper may make to protect his position with the Department, but only to set the background for the actions taken by the Department in recommending a 10 day suspension of Lieutenant John Dowd as to his supervision of Detective Halper when Lieutenant Dowd was a Sergeant.

3. Lieutenant John Dowd

Officer Webb sustained a number of allegations against then Sergeant, now Lieutenant, John Dowd, but not for all the days alleged as to Detective Halper's working at UPS. Typical of the allegations sustained against Lieutenant Dowd was Allegation 1 which read:

SUSTAINED- Violation of Rule 03

Any Failure to promote the Departments effort to Implement its policy or accomplish its goal. It is alleged by the complainant P.O. Joseph M. WEBB #17697, that on 04 January 2011 2300 thru 0200 hours, at the location of 5101 S. Wentworth Avenue Chicago Illinois, that Sergeant John DOWD #1554 failed to properly supervise Detective James HALPER #21345 ensuring that Detective James HALPER #21345 was present and working his scheduled tour of duty as a detective for the

Chicago Police Department.

SUSTAINED- Violation of Rule 10
Inattention to duty

It is alleged by the complainant P.O. Joseph M. WEBB #17697, that on 04 January 2011 2300 thru 0200 hours, at the location of 5101 S. Wentworth Avenue Chicago Illinois, that Sergeant John DOWD #1554 failed to properly supervise Detective James HALPER #21345 ensuring that Detective James HALPER #21345 was present and working his scheduled tour of duty as a detective for the Chicago Police Department.

Similar wording as to allegations concerning violations of Rules 3 and 10 were found as to 5 January 2011, 14 February 2011, 27 April 2011, 2 May 2011, 9 May 2011, 1 June 2011, 8 June 2011, 13 June 2011, 15 June 2011, 20 June 2011, 13 July 2011, 20 July 2011, 25 July 2011, 24 August 2011, 31 August 2011, 5 September 2011, 12 September 2011, 28 November 2011, 5 December 2011, 12 December 2011, 19 December 2011, 9 January 2012 and 23 January 2012. These were not all the dates that Detective Halper was charged with.

Lieutenant Kevin B. Duffin during the time involved was assigned to Central Area third watch. In his question and answer statement, Lieutenant Duffin stated clearly that there were two supervisors in Central Area third watch Property Crimes, namely, then Sergeant John Dowd and Sergeant Collis Tate, who were so assigned from January 2011 through January 2012. Sergeant Tate retired in April 2012 and has elected not to be involved in this investigation.

Lieutenant Duffin did state that he would not allow any Detective with a start time of 1700 while assigned to the third watch Central Area Detective Division "to adjust the start time in the area to 1330 hours to facilitate secondary employment outside the Department".

Lieutenant Dowd stated that during the time involved, based upon the A/A sheets, his tour of duty was 1500 to 0001, as was Sergeant Tate. Lieutenant Duffin also made the comment in his question and answer statement that it was not standard or common practice "for a

Detective assigned to the Central Area on the third watch to be allowed to adjust their start time to work secondary employment outside the Department”.

Discussion

There are two comments just referenced from Lieutenant Duffin that set the tone for the analysis of the allegations against Lieutenant Dowd. In the Union’s statement, the following is noted:

Lt Kevin Duffin who was the commanding officer of Area 1 stated, page 84 of summary, “it was not common or a standard practice for a detective assigned to Central Area to adjust their start time to work a secondary job...”. A review of the A/As on multiple dates would have uncovered there were other members assigned to the unit who had an adjusted start time due to being approved to work department sanctioned secondary employment on that date. The investigator never performed such a review.

This Arbitrator, though appreciating this comment, concludes that this grievance does not turn on this statement. The fact is Lieutenant Dowd, with the concurrence of Sergeant Tate, agreed to adjust Detective Halper’s start time to 1500-0001 for the days that Detective Halper was working at [REDACTED] namely, Monday and Wednesday. The issue is not whether there was an adjustment but how Detective Halper responded and what part did Lieutenant Dowd play in terms of supervision when after the fact an arbitrator reviewing the file concludes that Detective Halper was consistently leaving before the end of his scheduled tour without permission in order to report to his secondary employment at 2300.

The second comment of Lieutenant Duffin brings forth a serious issue of proof. There were two supervisors involved – Lieutenant Dowd and Sergeant Tate. There is a problem of ascertaining which supervisor and when should have been aware of Detective Halper’s actions. Observe what Officer Webb wrote in his summary report:

Retired Sgt Collis TATE will not be held accountable for the actions of Detective James HALPER. TATE'S retirement and lack of cooperation has not helped in the investigation. When Lt. DUFFIN said in his statement there were two supervisors on the third watch property crimes section, and they were DOWD and TATE, DUFFIN stated that they shared responsibility of supervising HALPER. DOWD can only be held accountable for half of the transgressions of HALPER.

This comment raises the question of who was responsible in the end in monitoring the actions of Detective Halper and to what extent. Officer Webb, approved by his supervisors, decided that Lieutenant Dowd should "be held accountable for half of the transactions of Helper" and that this was worth a two week suspension of a supervisor who had no discipline on his record and over 100 awards in a 22 year career. Or was it Sergeant Tate responsible for half or more who chose not to respond to the investigation?

After writing the above, Officer Webb in his summary writes:

... The question posed to Lt DUFFIN reflects the correct answer "of who" was responsible for the supervision of Det. HALPER? (See Attachment 43 page 41; question 31, answer 32) "To the best of your knowledge or recollection, was Sgt. DOWD responsible for the supervision of Detective James HALPER as his immediate supervisor during HALPERS assignment in the property crimes section of Area Central from January 2011 to January 2012?" "I believe he was. "

Observe the questions and answers on the point to the questions posed by Officer Webb on 26

March 2013 to Lieutenant Duffin:

WEBB: To the best of your knowledge or recollection, was Sergeant DOWD responsible for the supervision of Detective James HALPER as his immediate supervisor during HALPERS assignment in the property crimes section of Area Central from January 2011 to January 2012?

DUFFIN: I believe he was.

* * *

WEBB: To the best of your knowledge, or recollection on dates where Sergeants DOWD and TATE were both working

at Area Central Property Crimes, would the supervision of Detective HALPER be a responsibility shared equally by both DOWD and TATE?

DUFFIN: Yes to the best of my recollection.

This Arbitrator acknowledges that Officer Webb decided to charge Lieutenant Dowd with lack of supervision as to only half of Detective Halper's transgressions. But in his subsequent statement after analyzing some of the answers given by Lieutenant Dowd seemed to place blame on Lieutenant Dowd when in fact Lieutenant Duffin recognized that Sergeant Tate also had responsibility.

The question is whether they had equal responsibility as to supervision concerning Detective Halper's transgressions or did Tate have more than Dowd or vice versa, which is a problem, among others, in this file?

Officer Webb does write:

Sgt John DOWD, initially acknowledged being Detective HALPER'S immediate supervisor on two occasions when they were simultaneously working, and HALPER was found to be at United Parcel but then changed his answer to "I don't recall if I was his immediate supervisor, there were other supervisors working that day according to the A&A sheets." or DOWD answered "I don't recall if I was his immediate supervisor there were other supervisors working that day."

Indeed, throughout his question and answer, when asked about specific dates, Lieutenant Dowd testified that he did not recall if he was acting as Detective Halper's immediate supervisor on a given day, noting that there were also other supervisors involved.

In the Union's statement there was the following comment:

... The investigator completely, and quite incompetently, failed to address page 98 of Dowd's statement regarding Dowd working overtime on 16 JAN 12, and could not do end of watch check off. The investigator again failed to address the discrepancy on page 100 of Dowd's statement regarding 18 Jan 12, which verifiably contradict the A&As. On that date Dowd was called to come into work early to attend

a press conference with the superintendent. The change in his start times was reflected on the Property Crimes work sheets which the investigator never obtained. ...

In fact, Lieutenant Dowd's question and answer statement suggested that he may have worked through the night on an investigation which took his attention on 16 January 2012 which makes the Union's point. Apparently the A/A sheets did not reflect Lieutenant Dowd's statement that he came in early to attend a press conference with the Superintendent. There is also the following statement in the Union's statement:

... A question was asked: "Who is the person/s who regularly input the A&A information?" (Pg. 106 of Dowd's statement). The reply from Dowd: "Generally the persons are Sgt McGavock, Sgt Nowakowski, and Sgt Kelly that I Know of ... " These are supervisors assigned to Area 1 but in the Violent crimes section. The investigator made no effort to validate/invalidate this statement. Each section of the Area Detective Division maintained their own paper roster of start times for members assigned to that section. This roster was updated daily and accurately reflected any changes to a member's start time. These rosters were then sent to the Violent (HGS, Homicide, Sex Gang) section. Dowd's general start time was changed to 1400hrs. Upon being served with these allegations, Dowd attempted to get the roster/time sheets for the dates in question. Dowd was told these rosters did not exist because the record retention on these forms was one year.

This comment does raise some concern as to whether Lieutenant Dowd was as responsible as claimed based upon his own presence at the time that Detective Halper was leaving early. Although if the claim as to the paper roster related to Halper, the claim would not be very persuasive because it is clear what Detective Halper was doing.

There is one more point. The investigation was initiated on 19 October 2011, completed 6 October 2014. The elapsed time was 1,083 days. The last question and answer was taken on 26 March 2013. The surveillance was conducted before that date. Exactly why it took over one year to prepare the summary report, although there was a long paper trail, raises the question that the Union has raised that the investigation was not timely completed. This Arbitrator has spoken

to that issue within the Department on another case. *See, Rodriguez Gr. No. [REDACTED]; Thomas Gr. No. [REDACTED]/456 and Petrenko Gr. No. [REDACTED]/455* (Roumell, 2015).

However, in this case, this Arbitrator, so as not to influence any actions that the Department may take as to Detective Halper, will not rest his opinion on the length that this case took, but will factor in the length in considering Lieutenant Dowd's defense, particularly when another supervisor was also involved. This Arbitrator has pointed out the principle blame here is on Detective Halper.

There is a serious problem as between the supervision by Lieutenant Dowd and the now retired Sergeant Tate. There are times when Lieutenant Dowd was occupied, as this record indicates, in other duties. There were some missing records that could have been helpful to Lieutenant Dowd's defense.

However, the consistency of Detective Halper's transgressions for over a year at some point should have alerted supervision that Halper was leaving before 0001. But how often Lieutenant Dowd observed or should have observed Halper's actions is questionable since there was at least one other supervisor involved who is not being disciplined because of retirement and there may have been others. Nevertheless, it is reasonable to conclude with the consistencies of Detective Halper's transgressions that there were some inadequacies in Lieutenant Dowd's supervision of a subordinate that would require some correction of Lieutenant Dowd.

Thus, considering the totality of the circumstances along with the defenses that have been proffered, this Arbitrator will reduce the 10 day suspension to a two day suspension in order to correct so as to avoid such a situation in the future. A suspension recognizes that there was some fault on the part of supervision – not because they gave permission but because of some

monitoring that was required. The problem for the Department in expecting a longer suspension is that Lieutenant Dowd, who had since been promoted, based on his record, is an outstanding member of the Department. Yes, he along with Sergeant Tate should have caught the situation earlier. But the question is, who had the most or was there equal responsibility? And there were some documents that were not able to be produced in the defense. When the Arbitrator puts all the circumstances together, he reaches the results that he has – not because of leniency, but because of the practicalities of the situation. In the end, the Department can address the actual culprit in this situation. It was not Lieutenant Dowd. He may very well have been blindsided by Detective Halper. Yet, he, along with Sergeant Tate and perhaps some others, at some point should have picked up on the situation. This explains the modest discipline in order to correct so as to be alert to such possibilities when in a supervisory position.

BINDING AWARD

The proposed ten (10) day suspension of Lieutenant John Dowd is reduced to a two (2) day suspension.


GEORGE T. ROUMELL, JR.
Arbitrator

June 28, 2016